

HB 1887 - H AMD 38

By Representative Sawyer

ADOPTED 03/11/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 51.32.099 and 2011 c 291 s 2 are each amended to
4 read as follows:

5 (1)(a) The legislature intends to create improved vocational
6 outcomes for Washington state injured workers and employers through
7 legislative and regulatory change under a pilot program for the period
8 of January 1, 2008, through June 30, 2013. This pilot vocational
9 system is intended to allow opportunities for eligible workers to
10 participate in meaningful retraining in high-demand occupations,
11 improve successful return to work and achieve positive outcomes for
12 workers, reduce the incidence of repeat vocational services, increase
13 accountability and responsibility, and improve cost predictability.
14 To facilitate the study and evaluation of the results of the proposed
15 changes, the department shall establish the temporary funding of
16 certain state fund vocational costs through the medical aid account to
17 ensure the appropriate assessments to employers for the costs of their
18 claims for vocational services in accordance with RCW 51.32.0991.

19 (b) An independent review and study of the effects of the pilot
20 program shall be conducted to determine whether it has achieved the
21 appropriate outcomes at reasonable cost to the system. The review
22 shall include, at a minimum, a report on the department's performance
23 with regard to the provision of vocational services, the skills
24 acquired by workers who receive retraining services, the types of
25 training programs approved, whether the workers are employed, at what
26 jobs and wages after completion of the training program and at various
27 times subsequent to their claim closure, the number and demographics

1 of workers who choose the option provided in subsection (4)(b) of this
2 section, and their employment and earnings status at various times
3 subsequent to claim closure. The department may adopt rules, in
4 collaboration with the subcommittee created under (c)(iii) of this
5 subsection, to further define the scope and elements of the required
6 study. Reports of the independent researcher are due on December 1,
7 2010, December 1, 2011, and December 1, 2012.

8 (c) In implementing the pilot program, the department shall:

9 (i) Establish a vocational initiative project that includes
10 participation by the department as a partner with WorkSource, the
11 established state system that administers the federal workforce
12 investment act of 1998. As a partner, the department shall place
13 vocational professional full-time employees at pilot WorkSource
14 locations; refer some workers for vocational services to these
15 vocational professionals; and work with employers in work source pilot
16 areas to market the benefits of on-the-job training programs and with
17 community colleges to reserve slots in high employer demand programs
18 of study as defined in RCW 28B.50.030. These on-the-job training
19 programs and community college slots may be considered by both
20 department and private sector vocational professionals for vocational
21 plan development. The department will also assist stakeholders in
22 developing additional vocational training programs in various
23 industries, including but not limited to agriculture and construction.
24 These programs will expand the choices available to injured workers in
25 developing their vocational training plans with the assistance of
26 vocational professionals.

27 (ii) Develop and maintain a register of state fund and self-
28 insured workers who have been retrained or have selected any of the
29 vocational options described in this section for at least the duration
30 of the pilot program.

31 (iii) Create a vocational rehabilitation subcommittee made up of
32 members appointed by the director for at least the duration of the
33 pilot program. This subcommittee shall provide the business and labor
34 partnership needed to maintain focus on the intent of the pilot

1 program, as described in this section, and provide consistency and
2 transparency to the development of rules and policies. The
3 subcommittee shall report to the director at least annually and
4 recommend to the director and the legislature any additional statutory
5 changes needed, which may include extension of the pilot period. The
6 subcommittee shall provide input and oversight with the department
7 concerning the study required under (b) of this subsection. The
8 subcommittee shall provide recommendations for additional changes or
9 incentives for injured workers to return to work with their employer
10 of injury. The subcommittee shall also consider options that, under
11 limited circumstances, would allow injured workers to attend
12 baccalaureate institutions under their vocational rehabilitation plans
13 and, by December 31, 2013, the subcommittee shall provide
14 recommendations to the director and the legislature on statutory
15 changes needed to develop those options.

16 (iv) The department shall develop an annual report concerning
17 Washington's workers' compensation vocational rehabilitation system to
18 the legislature and to the subcommittee by December 1, 2009, and
19 annually thereafter with the final report due by December 1, 2012.
20 The annual report shall include the number of workers who have
21 participated in more than one vocational training plan beginning with
22 plans approved on January 1, 2008, and in which industries those
23 workers were employed. The final report shall include the
24 department's assessment and recommendations for further legislative
25 action, in collaboration with the subcommittee.

26 (2)(a) For the purposes of this section, the day the worker
27 commences vocational plan development means the date the department or
28 self-insurer notifies the worker of his or her eligibility for plan
29 development services or of an eligibility determination in response to
30 a dispute of a vocational decision.

31 (b) When the supervisor or supervisor's designee has decided that
32 vocational rehabilitation is both necessary and likely to make the
33 worker employable at gainful employment, he or she shall be provided
34 with services necessary to develop a vocational plan that, if

1 completed, would render the worker employable. The vocational
2 professional assigned to the claim shall, at the initial meeting with
3 the worker, fully inform the worker of the return-to-work priorities
4 set forth in RCW 51.32.095(2) and of his or her rights and
5 responsibilities under the workers' compensation vocational system.
6 The department shall provide tools to the vocational professional for
7 communicating this and other information required by RCW 51.32.095 and
8 this section to the worker.

9 (c) On the date the worker commences vocational plan development,
10 the department shall also inform the employer in writing of the
11 employer's right to make a valid return-to-work offer during the first
12 fifteen days following the commencement of vocational plan
13 development. However, at the sole discretion of the supervisor or the
14 supervisor's designee, an employer may be granted an extension of time
15 of up to ten additional days to make a valid return-to-work offer.
16 The additional days may be allowed by the department with or without a
17 request from the employer. The extension may only be granted if the
18 employer made a return-to-work offer to the worker within fifteen days
19 of the date the worker commenced vocational plan development that met
20 some but not all of the requirements in this section. To be valid,
21 the offer must be for bona fide employment with the employer of
22 injury, consistent with the worker's documented physical and mental
23 restrictions as provided by the worker's health care provider. When
24 the employer makes a valid return-to-work offer, the vocational plan
25 development services and temporary total disability compensation shall
26 be terminated effective on the starting date for the job without
27 regard to whether the worker accepts the return-to-work offer.

28 (d) Following the time period described in (c) of this subsection,
29 the employer may still provide, and the worker may accept, any valid
30 return-to-work offer. The worker's acceptance of such an offer shall
31 result in the termination of vocational plan development or
32 implementation services and temporary total disability compensation
33 effective the day the employment begins.

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1 (3)(a) All vocational plans must contain an accountability
2 agreement signed by the worker detailing expectations regarding
3 progress, attendance, and other factors influencing successful
4 participation in the plan. Failure to abide by the agreed
5 expectations shall result in suspension of vocational benefits
6 pursuant to RCW 51.32.110.

7 (b) Any formal education included as part of the vocational plan
8 must be for an accredited or licensed program or other program
9 approved by the department. The department shall develop rules that
10 provide criteria for the approval of nonaccredited or unlicensed
11 programs.

12 (c) The vocational plan for an individual worker must be completed
13 and submitted to the department within ninety days of the day the
14 worker commences vocational plan development. The department may
15 extend the ninety days for good cause. Criteria for good cause shall
16 be provided in rule. The frequency and reasons for good cause
17 extensions shall be reported to the subcommittee created under
18 subsection (1)(c)(iii) of this section.

19 (d) Costs for the vocational plan may include books, tuition,
20 fees, supplies, equipment, child or dependent care, training fees for
21 on-the-job training, the cost of furnishing tools and other equipment
22 necessary for self-employment or reemployment, and other necessary
23 expenses in an amount not to exceed twelve thousand dollars. This
24 amount shall be adjusted effective July 1 of each year for vocational
25 plans or retraining benefits available under subsection (4)(b) of this
26 section approved on or after this date but before June 30 of the next
27 year based on the average percentage change in tuition for the next
28 fall quarter for all Washington state community colleges.

29 (e) The duration of the vocational plan shall not exceed two years
30 from the date the plan is implemented. The worker shall receive
31 temporary total disability compensation under RCW 51.32.090 and the
32 cost of transportation while he or she is actively and successfully
33 participating in a vocational plan.

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1 (f) If the worker is required to reside away from his or her
2 customary residence, the reasonable cost of board and lodging shall
3 also be paid.

4 (4) Vocational plan development services shall be completed within
5 ninety days of commencing. Except as provided in RCW 51.32.095(3),
6 during vocational plan development the worker shall, with the
7 assistance of a vocational professional, participate in vocational
8 counseling and occupational exploration to include, but not be limited
9 to, identifying possible job goals, training needs, resources, and
10 expenses, consistent with the worker's physical and mental status. A
11 vocational rehabilitation plan shall be developed by the worker and
12 the vocational professional and submitted to the department or
13 self-insurer. Following this submission, the worker shall elect one
14 of the following options:

15 (a) Option 1: The department or self-insurer implements and the
16 worker participates in the vocational plan developed by the vocational
17 professional and approved by the worker and the department or
18 self-insurer. For state fund claims, the department must review and
19 approve the vocational plan before implementation may begin. If the
20 department takes no action within fifteen days, the plan is deemed
21 approved. The worker may, within fifteen days of the department's
22 approval of the plan or of a determination that the plan is valid
23 following a dispute, elect option 2. However, in the sole discretion
24 of the supervisor or supervisor's designee, the department may approve
25 an election for option 2 benefits that was submitted in writing within
26 twenty-five days of the department's approval of the plan or of a
27 determination that the plan is valid following a dispute if the worker
28 provides a written explanation establishing that he or she was unable
29 to submit his or her election of option 2 benefits within fifteen
30 days. In no circumstance may the department approve of an election
31 for option 2 benefits that was submitted more than twenty-five days
32 after the department's approval of a retraining plan or of a
33 determination that a plan is valid following a dispute.

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1 (i) Following successful completion of the vocational plan, any
2 subsequent assessment of whether vocational rehabilitation is both
3 necessary and likely to enable the injured worker to become employable
4 at gainful employment under RCW 51.32.095(1) shall include
5 consideration of transferable skills obtained in the vocational plan.

6 (ii) If a vocational plan is successfully completed on a claim
7 which is thereafter reopened as provided in RCW 51.32.160, the cost
8 and duration available for any subsequent vocational plan is limited
9 to that in subsection (3)(d) and (e) of this section, less that
10 previously expended.

11 (b) Option 2: The worker declines further vocational services
12 under the claim and receives an amount equal to six months of
13 temporary total disability compensation under RCW 51.32.090. The
14 award is payable in biweekly payments in accordance with the schedule
15 of temporary total disability payments, until such award is paid in
16 full. These payments shall not include interest on the unpaid
17 balance. However, upon application by the worker, and at the
18 discretion of the department, the compensation may be converted to a
19 lump sum payment. The vocational costs defined in subsection (3)(d)
20 of this section shall remain available to the worker, upon application
21 to the department or self-insurer, for a period of five years. The
22 vocational costs shall, if expended, be available for programs or
23 courses at any accredited or licensed institution or program from a
24 list of those approved by the department for tuition, books, fees,
25 supplies, equipment, and tools, without department or self-insurer
26 oversight. The department shall issue an order as provided in RCW
27 51.52.050 confirming the option 2 election, setting a payment
28 schedule, and terminating temporary total disability benefits
29 effective the date of the order confirming that election. The
30 department shall thereafter close the claim. A worker who elects
31 option 2 benefits shall not be entitled to further temporary total, or
32 to permanent total, disability benefits except upon a showing of a
33 worsening in the condition or conditions accepted under the claim such
34 that claim closure is not appropriate, in which case the option 2

1 selection will be rescinded and the amount paid to the worker will be
2 assessed as an overpayment. A claim that was closed based on the
3 worker's election of option 2 benefits may be reopened as provided in
4 RCW 51.32.160, but cannot be reopened for the sole purpose of allowing
5 the worker to seek vocational assistance.

6 (i) If within five years from the date the option 2 order becomes
7 final, the worker is subsequently injured or suffers an occupational
8 disease or reopens the claim as provided in RCW 51.32.160, and
9 vocational rehabilitation is found both necessary and likely to enable
10 the injured worker to become employable at gainful employment under
11 RCW 51.32.095(1), the duration of any vocational plan under subsection
12 (3)(e) of this section shall not exceed eighteen months.

13 (ii) If the available vocational costs are utilized by the worker,
14 any subsequent assessment of whether vocational rehabilitation is both
15 necessary and likely to enable the injured worker to become employable
16 at gainful employment under RCW 51.32.095(1) shall include
17 consideration of the transferable skills obtained.

18 (iii) If the available vocational costs are utilized by the worker
19 and the claim is thereafter reopened as provided in RCW 51.32.160, the
20 cost available for any vocational plan is limited to that in
21 subsection (3)(d) of this section less that previously expended.

22 (iv) Option 2 may only be elected once per worker.

23 (c) The director, in his or her sole discretion, may provide the
24 worker vocational assistance not to exceed that in subsection (3) of
25 this section, without regard to the worker's prior option selection or
26 benefits expended, where vocational assistance would prevent permanent
27 total disability under RCW 51.32.060.

28 (5)(a) As used in this section, "vocational plan interruption"
29 means an occurrence which disrupts the plan to the extent the
30 employability goal is no longer attainable. "Vocational plan
31 interruption" does not include institutionally scheduled breaks in
32 educational programs, occasional absence due to illness, or
33 modifications to the plan which will allow it to be completed within
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1 the cost and time provisions of subsection (3)(d) and (e) of this
2 section.

3 (b) When a vocational plan interruption is beyond the control of
4 the worker, the department or self-insurer shall recommence plan
5 development. If necessary to complete vocational services, the cost
6 and duration of the plan may include credit for that expended prior to
7 the interruption. A vocational plan interruption is considered
8 outside the control of the worker when it is due to the closure of the
9 accredited institution, when it is due to a death in the worker's
10 immediate family, or when documented changes in the worker's accepted
11 medical conditions prevent further participation in the vocational
12 plan.

13 (c) When a vocational plan interruption is the result of the
14 worker's actions, the worker's entitlement to benefits shall be
15 suspended in accordance with RCW 51.32.110. If plan development or
16 implementation is recommenced, the cost and duration of the plan shall
17 not include credit for that expended prior to the interruption. A
18 vocational plan interruption is considered a result of the worker's
19 actions when it is due to the failure to meet attendance expectations
20 set by the training or educational institution, failure to achieve
21 passing grades or acceptable performance review, unaccepted or
22 postinjury conditions that prevent further participation in the
23 vocational plan, or the worker's failure to abide by the
24 accountability agreement per subsection (3)(a) of this section."

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26 Correct the title.

EFFECT: Strikes all provisions of the bill and instead requires
the Vocational Rehabilitation Subcommittee to consider options that,
under limited circumstances, would allow injured workers to attend
baccalaureate institutions under their vocational rehabilitation
plans. Requires the subcommittee, by December 31, 2013, to provide
recommendations to the Department of Labor and Industries and the
Legislature on statutory changes needed to develop those options.

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